ATTORNEY FOR APPELLANT:

JAMES R. REED
Morocco, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

SHELLEY M. JOHNSON
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

LONNIE LEE WILLIAMS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0711-CR-520
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause No. 45G02-0705-FB-38

June 26, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Lonnie Lee Williams appeals his sentence for Dealing Cocaine,[1] a class B felony. He claims both that the trial court abused its discretion in sentencing him and that his sentence is inappropriate in light of his character and the nature of the offense.

We affirm.

On May 9, 2007, the State charged Williams with four counts of dealing cocaine, all as class B felonies. Thereafter, on August 17, Williams entered into a plea agreement with the State pursuant to which he agreed to plead guilty to one count of dealing and the State agreed to dismiss the remaining counts. The agreement also called for a cap of ten years on the sentence imposed. The trial court accepted the plea agreement.

At the sentencing hearing on September 28, the trial court sentenced Williams to ten years, with two of those years suspended to probation. Of the remaining eight years, the court ordered Williams to serve the first six years in the Department of Correction and the next two in the Lake County Sheriff's Work Release Program if he was found to be eligible. In sentencing Williams, the trial court found his guilty plea to be the lone mitigating circumstance and his criminal history (six prior misdemeanor convictions) to be the sole aggravating circumstance.

On appeal, Williams contends the trial court abused its discretion in failing to find certain mitigating circumstances. He also argues that his sentence is inappropriate in light of the nature of the offense and his character. In sum, Williams claims he should not have received "any period of incarceration" and asks that we revise his sentence to a term of probation, work release, or a combination of both. *Appellant's Brief* at 5.

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[1] Ind. Code Ann. § 35-48-4-1 (West, PREMISE through 2007 1st Regular Sess.).

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v.* State, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Under the new sentencing scheme, a court may impose any sentence authorized by statute and permissible under the Indiana Constitution regardless of the presence or absence of aggravating or mitigating circumstances. *Id*. Thus, in *Anglemyer*, our Supreme Court held:

> Because the trial court no longer has any obligation to "weigh" aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-*Blakely* statutory regime, a trial court can not now be said to have abused its discretion in failing to "properly weigh" such factors.

Anglemyer v. State, 868 N.E.2d at 491. Circumstances under which a trial court may be found to have abused its discretion include: (1) failing to enter a sentencing statement, (2) entering a sentencing statement that includes reasons not supported by the record, (3) entering a sentencing statement that omits reasons clearly supported by the record, or (4) entering a sentencing statement that includes reasons that are improper as a matter of law. *Anglemyer v. State*, 868 N.E.2d 482.

Williams contends the trial court abused its discretion in failing to consider two mitigating circumstances – that is, his remorsefulness and the undue hardship incarceration would cause on his fiancée and two minor sons. In this regard, he directs us to a letter that he wrote to the trial court prior to sentencing, which he claims clearly advanced and established these mitigators.

Because the trial court's recitation of its reasons for imposing sentence included a finding of aggravating and mitigating circumstances, the trial court was required to

identify all significant mitigating circumstances. *See id*. "An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record." *Id*. at 493. Further, if the trial court does not find the existence of a mitigating factor advanced by the defendant, the court is not obligated to explain why it has found that the factor does not exist. *Anglemyer v. State*, 868 N.E.2d 482.

The trial court's statement at sentencing reveals it considered and rejected Williams's claim of undue hardship on his dependents,[2] which Williams advocated in support of serving no time in prison. Specifically, the court explained:

> [Y]ou elected to do this and with full knowledge of the consequences and despite your family obligations that you speak of in your letter, you nevertheless decided to pursue this course of criminal conduct. That's terribly irresponsible on your part, in addition to being criminal, and now you're asking the Court to consider your family responsibilities when you, yourself, did not take those into account or did not give them the weight that they deserved in deciding to sell drugs. It wasn't important enough for you to prevent you from selling drugs and that's unfortunate.

Transcript at 18-19. It was within the trial court's discretion to reject this proposed mitigator. *See Weaver v. State*, 845 N.E.2d 1066, 1074 (Ind. Ct. App. 2006) ("sentencing court is not required to find a defendant's incarceration would result in undue hardship on his dependents"), *trans. denied*.

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[2] Contrary to Williams's representations to this court and the trial court, the presentence investigation report reveals that he has no dependent children. Rather, the two teenage sons of whom Williams speaks are two of his fiancée's three children.

Williams also claims the trial court failed to consider his remorsefulness. As he did not make an oral statement at the sentencing hearing, Williams directs us to his letter to the trial court, which provides in part:

> I ask your honor to take into consideration that I had only recently become involved in drugs and only did so a few times to supplement my lack of enough income to maintain my family's basic needs.
>
> I am now fully aware of how wrong it was and I am very remorseful for what I've done, so much so that I admitted my guilt and plead guilty as charged without so much as trying to plea down to a class C, even though I believe that option was available to me due to consideration that this is my first (and last) ever felony.
>
> I am not a big time drug dealer your honor, and this crime involving drugs will never be repeated by me, especially when I think of how hard I fight to keep my two children Sean age 16 and Seontay age 14, who are both good students, away from drugs.

Appellant's Appendix at 37. The trial court expressly disagreed with Williams's contention that he was not a major drug dealer. Moreover, we observe that Williams's decision to plead guilty was less likely a result of remorse than it was of pragmatism, as it resulted in the dismissal of three class B felony charges and a sentencing cap at the advisory level.[3] Under the circumstances, the trial court was not required to credit Williams's written expression of remorse as a significant mitigating circumstance. *See Corralez v. State*, 815 N.E.2d 1023, 1025 (Ind. Ct. App. 2004) ("substantial deference must be given to a trial court's evaluation of remorse").

Having found no abuse of discretion, we now address the appropriateness of Williams's sentence. We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in

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[3] The advisory sentence for a class B felony is ten years, with a maximum sentence of twenty years and a minimum of six years. Ind. Code Ann. § 35-50-2-5 (West, PREMISE through 2007 1st Regular Sess.).

light of the nature of the offense and character of the offender. *See* Indiana Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482. Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Thus, "we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. Moreover, we observe that Williams bears the burden of persuading this court that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

There is nothing in the record indicating that the nature of the instant dealing offense was particularly aggravating or mitigating. With respect to Williams's character, we observe that although he pleaded guilty, it is clear that he benefited greatly under the terms of the plea agreement. *See Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) ("a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one"), *trans. denied*. Further, Williams's criminal history is substantial, consisting of at least six misdemeanor convictions (including weapons offenses, criminal mischief, invasion of privacy, domestic battery, and operating while intoxicated). Finally, contrary to his apparent assertion on appeal, the fact Williams allegedly sold the cocaine to provide for his family does not speak well of his character.

Williams received only the advisory sentence of ten years for this offense, with two of those years to be served on work release and two of those years suspended to probation. This sentence is not inappropriate.

Judgment affirmed.

KIRSCH, J. and BAILEY, J., concur